

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF SPECIAL OPERATIONS • SPECIAL INVESTIGATIONS DIVISION

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April 13, 1999

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Dear Chief Port:

Re: S.I.D. File No: 100-8428/98-0315
L.A.S.D. File No: 0998-03717-0399-055

The Special Investigations Division of the Los Angeles County District Attorney's Office has completed its review of the March 27, 1998 fatal shooting of Michael William Arnold by California Highway Patrol (CHP) Officers [redacted] and [redacted], Hawthorne Police Department (HPD) Officers [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted]; and Los Angeles County Sheriff's Department (LASD) Deputies Mark McCorkle, Steve Marella, John Davoren, Mario Jimenez, Michael Valento, Joseph Morien, Curt Messerschmidt, Timothy Milliman, Richard McIntosh, Michael Velek, Greg Hinkle, Craig Anderson and Kenneth Fontanilla. This office conducted an exhaustive review of the LASD investigative package, which consisted of reports, logs, interview statements, coroner's report and photographs, crime scene diagrams and photographs, a forensic analysis report,

and a video tape.[1] Upon concluding its review, this office has determined that the actions of these law enforcement personnel were lawful and reasonable. Therefore, this office declines criminal prosecution.[2]

FACTUAL SUMMARY

On March 27, 1998, at approximately 1:49 a.m., Michael Arnold stopped his white Lincoln Towncar on the southbound 405 freeway transition road to the eastbound 105 freeway. Arnold stepped from his car and sat on the freeway railing with both of his legs dangling over the retaining wall. A passing motorist saw Arnold outside of his stopped car and believed he needed assistance. The motorist called 911 with a cellular telephone. A CHP operator answered the call and subsequently summoned the Los Angeles Fire Department (LAFD).

LAFD Paramedics Kirk Olson and Gabriel Alrich responded to a call of a man down on the ground outside of a vehicle. The paramedics approached but were forced to retreat after Arnold pointed a "large" gun at them. At 2:21 a.m., the paramedics requested assistance from the CHP. During their call to the CHP, the paramedics stated that Arnold was armed with a gun and had assaulted them.

CHP Officers [redacted] and [redacted] responded to the scene. As [redacted] and [redacted] drove toward Arnold, the paramedics frantically signaled them to stop. Firefighters informed [redacted] and [redacted] that Arnold was armed with a large weapon which they described as a "big gun or large rifle." [redacted], as a result, sought assistance from the LAPD Air Support and the HPD S.W.A.T. Thereafter, numerous law enforcement officers from the HPD, the LASD, the LAPD and the CHP arrived at the scene.

LAPD Officer [redacted], a tactical flight officer aboard the LAPD's Air-70 helicopter, received a request for assistance from the CHP. He and Sergeant [redacted], the pilot, flew to the 405 and 105 freeway interchange. [redacted] saw Arnold sitting on the freeway overpass atop a barrier wall. As [redacted] illuminated Arnold with a high intensity spotlight from the helicopter, he saw that Arnold was armed with a large gun. From his vantage point, [redacted] observed that several LASD vehicles were in tactically poor positions as they were in Arnold's "kill zone" or line of fire. [redacted] attempted to warn them about their precarious position, but discovered that the LASD and HPD radio frequencies were not compatible with his. [redacted], instead, radioed the warning to CHP dispatch.[3]

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[1] This office has examined one video tape, 196 crime scene photographs, and eighteen coroner's photographs. These items will be returned to the Sheriff's Department.

[2] This office's conclusions are based solely upon the information contained in the aforementioned LASD investigative package. This office has conducted no additional independent investigation.

[3] CHP Officer [redacted] told investigators that he was coordinating allied agencies via the CHP dispatch radio. Because of the multi-agency participation, "[t]he coordination and sharing of information was impaired by the

As [redacted] continued to watch, Arnold walked to the trunk of the Lincoln and retrieved a bottle[4] and a second gun. Arnold returned to the railing, placed the bottle in front of him and drank from it. Arnold "tapped and racked"[5] one of the handguns. He then moved his left hand to the top of the gun and pulled the slide back to chamber a round. Arnold now pointed his gun at the LASD deputies below him.[6] As [redacted] reported over his radio that Arnold was shooting at the deputies, Arnold pointed his weapon at [redacted]'s helicopter. Immediately thereafter, Arnold pointed the gun at his right temple. Arnold then kicked and broke the bottle, laid on the ground, and placed the barrel of the gun in his mouth. A few seconds later, Arnold walked to the Lincoln and retrieved a cellular telephone. He held the telephone to his ear for approximately one minute. Arnold then placed both guns inside the car, turned on his headlights and, at 3:08 a.m., slowly drove a short distance and exited the freeway at Prairie Street.[7]

Police vehicles turned on their lights and sirens while following Arnold southbound on Prairie Street at approximately fifteen miles per hour. Arnold stopped near the intersection of Prairie and 118th Streets, then stepped out of his car holding a large handgun in his right hand. Arnold walked around the trunk of the car to the curb. Arnold again made a "tapping and racking" motion with the gun and pointed it at his right temple. Deputies and officers believed that the weapon was loaded and ready to be fired. Law enforcement officers repeatedly yelled, "[D]on't do it." "Put your gun down." As Arnold looked directly at the deputies and officers, Arnold pulled the gun from his head and pointed it at them. All twenty-two officers and deputies who responded with gunfire did so because they believed Arnold posed a threat to all who were present. When Arnold slumped against a chain-link fence, and was no longer a threat, the gunfire stopped. Arnold was pronounced dead at the scene by LAFD personnel.

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incapacity to communicate on a common radio frequency amongst four separate police agencies. The early communications ...[consisted of] shouting verbally from one agency officer to another."

[4] After the shooting, Sheriff's crime lab photographer Darnell Carter recovered one broken "Smirnoff's" vodka bottle laying on the west shoulder of the overpass where Arnold had been sitting.

[5] Arnold held the gun in his right hand and with his left hand hit the bottom of the gun as if he were either inserting a magazine into the gun's handle or ensuring that the magazine was in place.

[6] LASD Deputies Marella and Morien were approximately 175 yards from Arnold, below the overpass, when they saw Arnold shoot at them and the LAPD helicopter. Both returned fire.

[7] Dramatic videotape footage of this incident was broadcast by local Los Angeles television stations. That footage clearly revealed Arnold straddling the overpass railing with a bottle and two guns between his legs. A distant shot illustrated Arnold's precarious position on the railing and the roadway traffic one hundred feet below him. The LAPD helicopter could be seen flying over Arnold and illuminating him with its spotlight. Arnold is seen drinking from the bottle and holding the two guns. Several times Arnold placed one of the guns to his temple. Arnold loaded a black long barreled gun just before pointing it at LASD deputies and the LAPD helicopter. Overheard on what appeared to be police communications, were voices saying that Arnold had a "gun to his temple," that "the suspect [was] laying on his back with a gun in his mouth" and was "shooting at the deputies below and at the helicopter". The videotape ended with Arnold entering his car.

A subsequent inspection of Arnold's weapons revealed that the firearms were a "Crossman Repeater" BB pistol and a pump pellet pistol.

ADDITIONAL INVESTIGATION

Deputy Medical Examiner Lisa Scheinin, M.D. performed the autopsy. In her opinion, Arnold's death was caused by multiple gunshot and shotgun wounds. Scheinin detected at least 106 entry wounds, 55 of which were fatal. In her report, Dr. Scheinin wrote, "The vast majority of the projectiles have a left to right and front to back direction of travel....One non-fatal injury to the right temporal area due to a BB pellet is present....This is a self-inflicted injury...indicative of an attempted suicide." Scheinin determined that the BB injury occurred while Arnold was alive. Additionally, Scheinin discovered numerous "healed incised wounds of the wrists, antecubital rossae and sides of the neck indicat[ive] [of] previous suicide attempts." She found that Arnold had a cirrhotic and fibrotic liver consistent with alcoholic liver disease.

Schenin also summarized Arnold's medical records from Kaiser Hospital. These records reflected four prior [redacted] and one incident of acute [redacted]. On December 4, 1995 Arnold attempted [redacted] during or after a five day binge on one liter of vodka per day. On December 12, 1995, Arnold drank one liter of vodka, took thirty valium pills, [redacted] both wrists and [redacted] his wife. On April 6, 1996, Arnold [redacted] both wrists and his neck. On December 4, 1997 Arnold was admitted to the emergency room with acute [redacted]. On April 1, 1996, Arnold again [redacted] after drinking vodka.

Toxicological analyses were performed by Joseph J. Muto. Arnold's blood alcohol level at the time of death was 0.17 grams percent.

Arnold's step-daughter, [redacted], told a Coroner's Office investigator that on March 26, 1998, Arnold complained about having a "bad day." She was worried because Arnold came to visit her at her home which was, "out of character" for him.

[redacted]'s husband, [redacted], called the LASD Lennox station March 27, 1998, after viewing morning television newscasts of the incident. He told an investigator he believed the person involved in the shooting was his wife's step-father, Michael Arnold. He added that Arnold "ha[d] medical problems" and a history of prior [redacted]. According to [redacted], although Arnold at one point was doing well and was clean and sober, Arnold had fallen back into alcoholism in recent months.

[redacted] added that Arnold visited the night before this incident, which was extremely "unusual." [redacted] thought something was bothering Arnold and was further disturbed when Arnold ended the short visit with a very strange "good-bye."

LEGAL ANALYSIS AND CONCLUSION

In protecting himself or another, a person may use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. California Jury Instructions--Criminal (CALJIC) 5.30 and 5.32.

If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. Actual danger is not necessary to justify the use of deadly force in self-defense. The right of self-defense is the same whether the danger is real or merely apparent. People v. Toledo (1948) 85 Cal.App.2d 577.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments--in circumstances that are tense, uncertain, and rapidly evolving--about the amount of force that is necessary in a particular situation." Graham v. Connor (1989) U.S. 386, 196-397, 104 L. Ed.2d 443, 109 S. Ct. 1865.

In the present case, law enforcement personnel confronted an individual who was a danger to himself, to passing motorists and law enforcement and fire department personnel who responded to assist him. Arnold stopped his vehicle on the freeway overpass, stepped out and proceeded to impede the flow of traffic by running across the lanes of traffic, straddling the railing and laying down on the ground. In a deadly calculated move to convince officers and deputies that he was armed, Arnold appeared to load, point and shoot two guns. At one point, Arnold pointed the gun at his temple and placed the barrel of the gun in his mouth. Throughout the night, Arnold created the impression that he was a danger to himself, innocent persons and law enforcement. Moreover, Arnold was undeterred when deputies shot at him. Instead of surrendering, he calmly entered his vehicle and led officers and deputies on a slow chase. Arnold ignored the sirens and lights of the numerous police vehicles following him. When he got out of his vehicle and again pointed a gun to his temple, Arnold disregarded the repeated pleas to drop his weapon. Instead, after appearing to chamber a round in the gun, Arnold pointed the gun at officers and deputies, who reasonably believed they had to fire at him in self-defense.

Arnold's actions on the evening of March 26 and early morning of March 27, 1998, including his visit to his step-daughter, the [redacted] wound to his temple and his contact with police, strongly indicate that he expected and wanted [redacted]. After four failed [redacted], the facts suggest that Arnold chose to [redacted] by causing law enforcement officers to believe they had to shoot him in self-defense and in defense of others.

Notwithstanding the number of times Arnold was shot, there was no other reasonable action that the numerous officers and deputies at the scene could have taken. They fired in self-defense and in defense of others. Their actions were both lawful and reasonable.

Accordingly, this office will take no further action in this matter. Our file is now closed.

Very truly yours,

GIL GARCETTI
DISTRICT ATTORNEY

By Valerie Aenlle-Rocha (CCk)

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